

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DEVON DENZEL LETOURNEAU,	:	
(a/k/a SHABAZZ BE ALLAH)	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 22-285JJM
	:	
RHODE ISLAND DEPARTMENT OF	:	
CORRECTIONS, et al.,	:	
Defendants.	:	

MEMORANDUM AND ORDER

PATRICIA A. SULLIVAN, United States Magistrate Judge.

On August 1, 2022, Plaintiff Devon Letourneau, a/k/a Shabazz Be Allah, a prisoner in the custody of the Rhode Island Department of Corrections (“RIDOC”) and a practitioner of the “culture and way of life” called the Nation of Gods and Earths (“NOGE”), initiated this case alleging that, despite having agreed to do so in a 2017 settlement, RIDOC has failed to recognize NOGE as a religion and failed to treat its adherents similarly to how adherents of other religions are treated. While most of Plaintiff’s original complaint either was not challenged or survived the motion to dismiss, on July 11, 2023, the Court adopted my recommendation and granted, *inter alia*, the motion of Defendants Richard Hahn and Vance Tyree to dismiss for failure to state a claim. Letourneau v. Rhode Island Dep’t of Corr., C.A. No. 22-285JJM, 2023 WL 4156827, at *5 (D.R.I. June 23, 2023), adopted by text order (D.R.I. July 11, 2023). This ruling was based on the insufficiency of the pleading’s factual allegations to support a plausible claim. Id. at *5-6.

Pursuant to Fed. R. Civ. P. 15(a)(2), on August 2, 2023, Plaintiff moved for leave to file the First Amended Complaint (“Complaint”). ECF No. 25. In the proposed pleading, Plaintiff

sought to narrow his claims by removing the “purely speculative parts” of the original pleading. ECF No. 29 at 2. Specifically, as Defendants correctly point out, the Complaint drops all claims based on the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc et seq.¹ It appears to add two new state law claims. It drops Defendants David Larangeira and James Thifault, but adds three new Defendants (Director Wayne Salisbury, Warden Lynne Corry and grievance coordinator Billie Jo Gallagher). It also seeks to add back into the case the two Defendants – Hahn and Tyree – who had previously been dismissed.

Defendants objected to the motion to amend based on futility. ECF No. 27. Citing Robb Evans & Assocs., LLC v. United States, 850 F.3d 24, 31 (1st Cir. 2017), Defendants argue that the previously dismissed claims may not be asserted because they are barred by the doctrine of collateral estoppel. ECF No. 27 at 4-5. However, this invocation of collateral estoppel is not apt because the Court’s dismissal of these claims did not amount to a final judgment, which is an essential prerequisite to collateral estoppel. Robb Evans, 850 F.3d at 32. Therefore, this objection to the motion to amend is overruled.

While it is far from clear that each of Plaintiff’s claims against each named Defendant is both plausible and legally supportable, mindful of Plaintiff’s *pro se* status, the Court hereby grants the motion to amend, subject to the right of any Defendant to file a motion to dismiss. The Clerk is directed to file the proposed amended pleading (ECF No. 25-1) as the operative complaint and to initiate the process for completing service of the Complaint on the new Defendants (Salisbury, Corry, Gallagher, Hahn and Tyree). The time for the existing Defendants

¹ As a matter of law, once the First Amended Complaint becomes the operative pleading, Plaintiff’s RLUIPA claim terminates. See Marcello v. Desano, No. CA 05-004 ML, 2006 WL 1582404, at *1 n.2 (D.R.I. Mar. 23, 2006) (any claims in an original pleading that were not reasserted in the amended pleading are superseded and of no legal effect), adopted, 2006 WL 909930 (D.R.I. 2006). Therefore, the Court need not address Defendants’ alternative argument that the claim is futile.

(RIDOC and Walter Duffy) to answer, move or otherwise respond to the Complaint shall be as set by the applicable Rules.

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
September 21, 2023